THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2959 of 2006

Dated:11.10.2006

Between
Kurapati Pardhasaradhi

.....Petitioner

and

1.The District Collector, Ongole
Prakasam Dsitrict and others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.2959 of 2006

ORDER:

This writ petition is filed seeking Certiorari to call for the records pertaining to the proceedings of the 1st respondent vide Rc.CS2/3586/2005 dated 28.1.2006, confirming the order of the 2nd respondent dated 30.9.2005 and the order of the 3rd vide proceedings dated 5.5.2005 cancelling the authorization of the petitioner for the fair price shop No.27 of Ongole town, as arbitrary and illegal.

It appears that the petitioner was the fair price shop dealer of shop No.7, Dharavarithota, Ongole town, Prakasam District. While so, on 30.11.2004, the Mandal Revenue Officer conducted a surprise inspection, drafted panchanama and seized 10.57 quintals of rice. Thereafter, a show cause notice

was issued, for which, he submitted his explanation. After receiving the said explanation, the authorization of the petitioner was cancelled by the 3rd respondent-Revenue Divisional Officer, Ongole *vide* proceedings dated 5.5.2005. Aggrieved by the same, the petitioner carried the matter in appeal before the 2nd respondent-Joint Collector. The Joint Collector dismissed the appeal confirming the orders of the 3rd respondent. Aggrieved thereby, the petitioner further carried the matter in revision before the 1st respondent-District Collector. The 1st respondent also confirmed the order of the Joint Collector and rejected the revision vide proceedings dated 28.1.2006. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner drawn attention of the Court to the Panchanama dated 30-11-2004 conducted by the Mandal Revenue Officer, Ongole. The Panchanama does not reveal as to any variations found by the Mandal Revenue Officer on 30.11.2004 as to the stocks. It simply says that

in the inspection, it was established that the dealer has committed irregularities and PDS and AAY rice of 10 quintals 57 kgs was seized and the signatures of the panchayatadars were taken. According to the learned counsel for the petitioner, the 5th panchayatdar A.Sreenivasa Rao has filed a petition before the Revenue Divisional Officer stating that he was not aware of any panchanama being conducted by the Mandal Revenue Officer on 30.11.2004. He did not possess any ration card, and he was not aware what happened at the ration shop and there was no chance of signing in the Panchanama as he never went to the ration shop till now. Apart from this, the learned counsel for the petitioner stated the very signatures in the panchanama are not true and correct and drawn attention of this Court to para 11 of the Judgment in Crl.A.No.61 of 2005, which reads as under:

> "As seen from the record, the Mandal Revenue Officer inspected the shop of he appellant on 30.11.2004 at 5 p.m. The contents of panchanama show that the appellant was present at the shop. It is mentioned in the panchanama that the Mandal Revenue Officer has sealed the shop and seized the

PDS and AAY Rice of 10.57 quintals. It is also mentioned in the panchanama that the appellant refused to sign in the panchanama. It appears that the Mandal Revenue Officer has prepared the statement of the appellant, wherein it is mentioned that the stocks sold in the month of November when verified came to 49.12 quintals and that there were 209 coupons and the total quantity of rice for 209 coupons comes to 36.12 quintals and that there were no coupons available for remaining 13 quintals of rice. These particulars have been mentioned in the statement of appellant. Beneath the statement, the Mandal Revenue Officer noted as " refused to sign before me". The Mandal Revenue Officer also obtained the signatures of two mediators viz., (1) Ch.Srinivasa Rao and (2) A.Phanindra Reddy, in the said statement. But as far as the panchanama is concerned, the names of the panchayatdars mentioned there in are (1) Dappugottu Brahmaiah 2. Shaik Babu, 3.Gadiyam Peera Reddy, 4.Vippala Narasa Reddy and 5.Annam Srinivasa Rao. So, the mediators who have signed in the panchanama are not the persons who signed as witnesses in the statement said to have recorded by the Mandal Revenue Officer. It is not clear as to why the Mandal Revenue Officer has failed to take the signatures of the same mediators who have signed in the panchanama. It has to be seen that there is no mention of seizing of coupons and other particulars of contraventions in the panchanama. Admittedly appellant has not signed in the statement. Therefore, in the above circumstances, I am of the view that the appellant is entitled for benefit of doubt."

From the above, it is clear that the persons whose names mentioned in the panchanama are

different from the persons who signed in the panchanama. Apart from that, the fact that what exactly the variation of the stocks of rice in the shop is also not mentioned therein. Except this, no other charge was framed against the petitioner. Further, learned counsel for the petitioner has drawn the attention of this Court to the impugned proceedings of the Revenue Divisional Officer, Ongole, which reads as under:

> "As per the request of the Advocate, a copy of the report of the Mandal Revenue Officer, Ongole dated 30.11.2004 was supplied to the dealer to defend his case. Further a notice was issued to the dealer to attend before the Revenue Divisional Officer, Ongole on 23.4.2005 for personal hearing to represent the case. The dealer attended on 23.4.2005 and argued through his Advocate on the lines of his explanation as was filed earlier and also requested to supply the copies of the Sales Register, stock register, coupons seized by the Mandal Revenue Officer or permit the petitioner to verify the sales register, stock register and coupons at the time of hearing.
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> Insisting for supply of copies of sales register, coupons that were seized by the Mandal Revenue Officer, Ongole (Inspecting Officer) at this belated stage speaks of his intention to drop on the issue and to continuous as FP shop dealer even after the gross violation committed by him. Had it been true that he is willing to contest his case after perusing the sales register, coupons that were seized by the inspecting

officer, he would have been field his petition in the Court of the Joint Collector, Ongole at the time of filing his appeal petition on 17-12-2004; because he knows pretty well that all the records seized by the inspecting officer together with the record of the appointing Authority i.e., Revenue Divisional Officer, Ongole would be sent to the Joint Collector, Ongole for perusal and enquiry and more over the record in which the respondent requested to supply, are available in the Court of Joint Collector, Ongole in connection with 6-A case filed against the dealer by the inspecting officer."

The entire record was with the Joint Collector, Ongole in connection with 6-A proceedings. When the petitioner asked for certain documents, it was stated that all the documents are with the Joint Collector in connection with 6-A proceedings. If that is so, on what basis the Revenue Divisional Officer has come to the conclusion that the petitioner is guilty of the charge framed against him, is not known. This is clear from the above panchanama. Further, learned counsel for the petitioner has also drawn attention of Court to the order passed by the District Collector in the impugned proceedings, which reads as under:

"After undergoing adjournments, this revision petition has finally come up for hearing on 28.1.2006. The Counsel for the Revision petitioner appeared and

argued the case. The main allegation against the revision petitioner is that he failed to produce Rice Coupons for a quality of 13-00 Qtls of rice at the time of inspection to the inspecting officers. In this explanation the revision petitioner stated that the inspecting officers have not verified the coupons properly. The revision petitioner failed to produce evidence to substantiate his contention even before the RDO/JC/Collector by producing the total rice coupons said to have been available with him as his contention was that the Inspecting Officers have not verified the coupons properly. The Fair price shop dealer has refused to sign on the panchanama conducted by the Mandal Revenue Officer at the time of inspection in the village before the Public at the premises of the fair price shop. The fair price shop dealer has also not cooperated with the Inspecting Officials. It is a grave irregularity on the part of the dealer."

From the above, it is clear that neither the panchanama was conducted properly nor the coupons, which were seized and other documents, which were required for the purpose of defending the case of the petitioner, were supplied on the ground that they were with the Joint Collector for the purpose of 6-A proceedings. If they are not available for the purpose of this enquiry for supplying them to the advocate, it is equally not available with the Revenue Divisional Officer to consider them properly as required under law.

Therefore, the impugned order passed by the Revenue Divisional Officer, as confirmed by the Joint Collector and further confirmed by the District Collector suffers from gross violation of principles of natural justice. Apart from this, the very panchanama does not reveal as to the variation. Even if the matter is remitted back for reconsideration, the authorities may not improve the matter for the purpose of conducting enquiry assuming that there are some irregularities committed by the petitioner .

In view of this, I am of the opinion that the period from the date of suspension till date be treated as suspension as a measure of punishment, instead of directing for fresh enquiry.

Therefore, the writ petiton is allowed and the impugned order is set aside. The respondent authorities are directed to restore the authorization of the petitioner forthwith.

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11-10-2006

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